

Serial No. 10/798,286
Response to Action dated August 16, 2007
Dated October 16, 2007

DA V001-082 (IP-889-2003)

REMARKS

After entry of this Amendment claims 1-18 and 20 are pending in this application. Claims 7 and 18 have been amended to more specifically claim the subject matter of Applicants' invention. Claim 19 has been cancelled. For the following reasons, it is respectfully submitted that Applicant's invention as set forth in the claims includes features which are not anticipated or rendered obvious by the cited references, taken singly or in combination. Reconsideration of the application as amended is requested.

In the Final Office Action dated April 24, 2007, claims 7-9, 12-13 and 18 stand rejected under 35 U.S.C. §112 ¶2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants' regard as the invention. Claims 7 and 18 have been amended.

Claims 1-6, 10-11, and 14-20 stand rejected under 35 U.S.C. §102(e) as being anticipated by Davis, U.S. Patent No. 6,772,601. Applicants submit herewith a Declaration under Rule 37 C.F.R. §1.131 establishing a prior date of conception for Applicants' invention earlier than the earliest claimed date of Davis. As such, it is respectfully submitted that Davis is not a citable reference against Applicants' invention as set forth in claims 1-6, 10-11, and 14-20. Reconsideration is respectfully requested.

Claims 7-9 and 12-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Davis. Regarding claims 7 and 12, the Examiner asserts that although optimizing the operational speed of the evaporator fan is not disclosed in Davis, it would have been obvious to one skilled in the art to optimize the operational speed of the evaporator fan based on the ambient and evaporator temperatures because the temperature of the evaporator and the ambient air directly affect the temperature of the freezer compartment. Regarding claims 8 and 13, the Examiner asserts that although Davis does not teach operating the speed of the compressor to minimize energy usage, it would have been obvious to one skilled in the art to reduce the speed of the evaporator fan based on a reduction in the operating speed of the compressor in order to minimize energy usage and ensure there is not a large temperature deviation within the freezer compartment in view of the teachings in Davis.

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Applicants submit herewith a Declaration under rule 37 C.F.R. §1.130 stating that the application and the cited reference, Davis, were, at the time the invention of this application was made, owned by the same entity or subjected to an obligation of assignment to the same entity. As such, it is respectfully submitted that Davis must be disqualified as a reference and is not a citable reference against Applicant's invention as set forth in claims 7-9 and 12-13. Notwithstanding the foregoing, the aforementioned declaration submitted under 37 C.F.R. §1.131 disqualifies Davis and is no longer a citable reference. Reconsideration is respectfully requested.

It is respectfully submitted that this Amendment traverses and overcomes all of the Examiner's objections and rejections to the application and places the application in suitable condition for allowance; notice of which is respectfully requested. Reconsideration of the application is requested.

Please add the following attorneys, Tara M. Hartman, Registration No. 58,805, Thomas A. Schwyn, Registration No. 34,008, and Clifton G. Green, Registration No. 41,044, as attorneys of record on this application.

Respectfully submitted,

/Kirk W. Goodwin/

Kirk W. Goodwin, Reg. No. 46,161
 Telephone (269) 923-8081

Dated: October 16, 2007

WHIRLPOOL PATENTS COMPANY
 500 Renaissance Drive – Ste. 102 MD750
 St. Joseph, Michigan 49085

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

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/Deborah A. Tomaszewski/

Signature

Date: October 16, 2007

Deborah A. Tomaszewski
 (type or print name of person certifying)